Supreme Court, U.S.
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SUPREME COURT OF THE UNITED STATES
C.A. No. 02-1133
D.C. No. 01-40014-NMG

THOMAS V. BAXTER, Petitioner,

vs.

CATHARINE E. CONTE, DONALD CONTE, JOHN J. CONTE, AND OFFICER (first name unknown) EARLY, INDIVIDUALLY AND IN THEIR OFFICIAL CAPACITIES; CITY OF WORCESTER, MASSACHUSETTS, AND WORCESTER POLICE DEPARTMENT
Respondents.

On Petition For Writ Of Certiorari To The United States Court of Appeals for the First Circuit

PETITION FOR WRIT OF CERTIORARI

Petitioner Pro Se
Thomas V. Baxter
44 Walter Street
Worcester, MA 01609
(508) 757-8092

30 pp

I. QUESTIONS PRESENTED FOR REVIEW

This case grew out of a vendetta against the petitioner by the family of the respondents because of a soured relationship between the petitioner and the lead respondent It made its way to federal court because of the political influence and positon of the defendant as district attorney to use state power to deprive petitioner of federally guaranteed rights.

A. Whether a citizen has the right of privacy to be let alone in his home against warrantless, non-consentual, and unannounced entry by the police absent exigent circumstances for the purpose of harassment.

B. Whether the court may make findings of fact when ruling on a FRCP 12(b)(6) motion.

C. Whether the filing of false charges in retaliation against a citizen for a decision not to enter into an intimate romantic relationship is a violation of the 1st amendments right of association.

D. Whether a court must make an effort to view a complaint liberally when filed pro se.

E. whether the intentional deprivation of ones Property by a municipal policymaker in violation of state law without any process whatsoever is a violation of due process.

F. Whether the 1st Circuit may continue to impose a heightened pleading requirement in civil rights cases that involve improper motive.

G. whether the request to amend complaint by a pro se plaintiff should be granted in the interest of justice

H. whether one has a property interest in an FID card.

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II. OPINION BELOW

The Court of Appeals for the First Circuit entered an opinion affirming the District Court and it appears at Appendix A to the petition and is unpublished. The order denying the petition for rehearing and for rehearing en banc dated October 3, 2002 appears at Appendix A to the petition and is unpublished. The District court order also appears at the appendix.

III. JURISDICTION

Jurisdiction of this Court is invoked under Title 28, United States Code sec. 1254(1).

IV. CONSTITUTIONAL and STATUTORY PROVISIONS INVOLVED

A. Constitutional Provisions:
1. United States Constitution amendment I
2. United States Constitution amendment IV
3. United States Constitution amendment XIV
B. Statutory Provisions:
1. 18 U.S.C. § 1983

V. STATEMENT OF THE CASE

This case had its beginning when the petitioner was attending college and the respondent Catherine conte transferred into institution I was attending. A short romantic relationship began in the short time before my graduation however that was just the beginning of a nightmare stalking campaign by the respondent Catherine conte. Over the years since its

inception the stalking has taken many forms and involves scores of incidents that were not mentioned in my complaint because they were not relevant to the legal issues which make this a federal case. The reason that this particular stalking campaign is a federal case is because of the nature and position of family members of the defendant. Whereas most stalkers harass their intended victims through phone harassment, use of the mail, and actual following which I have been the victim of, this particular campaign also involves constitutional issues because my stalker has tools available, namely political influence, that others don't.

When the traditional tools of the stalker were not having the intended effect and it was made clear to the respondents that I would not succumb to their harassment as referenced in my complaint in paragraph 26 their tactics changed and they used much more serious tools. In December 1990 I expressed my wish not to enter into any further relationship with the respondent Catherine conte. The immediate result within hours was vandalism to my vehicle. A couple of months later respondents retaliated against my expressive speech of December by causing the filing of false criminal charges against me through the use of the district attorney's office under the control of respondent Catherine contes Uncle who is the district attorney and a co-respondent. This particular district attorney has never actually prosecuted a case and a strictly a manager. After two hearings these charges were thrown out because there was the basis for them. There was never any probable cause, there was never an incident. I had received the first notice of these charges through the mail on April first 1991. No policeman or anyone ever witnessed anything as there was nothing to witness. The number of

witnesses of mine wherein attendence at the hearings and witnessed the pawns of the respondents change their story many times and then laugh when the case was thrown out. I complained bitterly to the magistrate and demanded that something be done about what I'd been through but was told forcefully to be thankful it was over and to leave. I was also told that I had no legal recourse and then I could do nothing about what i had been through.

As stated before countless events of harassment have occurred since leaving college in 1985. Many these occurrences have provided me with physical evidence of a pattern of harassment and stalking. Such evidence such as letters, audio evidence, documents, and eye witnessed events will be used to prove this campaign of harassment and stalking that I allege in my complaint. That is the common thread that runs through the specific events that are complained of in my complaint. As a cause of action is only required by the federal rules of civil procedure to be a short and plain statement that puts the defendant on notice of what is being complained of, it is not time for that.

In January 1998 the respondents again used elements of the legal system at that their disposal to harass and intimidate. A Worcester policeman entered my home without a warrant, without permission, unannounced and absent any exigent circumstances to justify his intrusion. He did not announced his presence or his purpose before entering, he was able to enter because a woman who had been granted entry turned around and held the door open for this policeman to enter. I and my family members did not see him or grant him permission to enter. The woman who had entered was

blocking the door area and as soon as his presence was known his entrance and presents were objected to. In response, this uniformed and armed policeman told me that there was nothing that I can do about it. Soon after entering, this policeman made referenced to multiple complaints made in the prior days to the police about us. Within fifteen minutes these charges had evaporated. They had never existed. They were an excuse for his entry and continued presents and also the aim of the respondents who were using this policeman as a pawn. Soon thereafter this policeman left my home, the damage, namely, the security one feels in ones home having been destroyed, had been accomplished.

The following year, 1999, as required by a new state law I like many others who owned and possessed firearms had to renew their FID card. This card is a firearms identification card. It is to be granted to every citizen of the state of Massachusetts upon request in accordance with the state Constitution that grants the right to possess in use firearms. Let me make it very clear that I had possessed my FId card for many years before I had to renew because of the new law. The new law did not cancel an existing card. The card that I had possessed for many years was my property and with it I enjoyed the use of that property which enabled me to travel in the state to gun ranges to use my guns. I complied with the law and paid the new fee of 25 dollars and provided the picture that was needed. Even though I did everything required of me the Worcester police did not do what was required of them, namely, sending to me my new card or as required by the new law a letter informing me that I was denied an FID card. Since this was the renewal and not a fresh application and nothing had happened to disqualify me

from possessing an FID card a letter would make no sense. Instead he was to police, namely, the chief as policymaker did nothing. They were contacted by the state office in charge of this area and still did not send me my card. Through this conscious action of taking away my property without any process by a municipal policymaker and what I allege is further harassment orchestrated by the conte family, I have lost the enjoyment of my property.

VI. REASONS FOR GRANTING THE WRIT

The court of appeals for the first circuit and the District Court have ruled on important federal questions in complete disagreement with the decisions of the first circuit and importantly with other circuits and landmark decisions of the Supreme Court. These decisions seriously erode the fourth and first amendment rights guaranteed by the Constitution and existing case law. This case also presents some issues of first impression.

The fundamental fairness of the judicial process is also being tested in this case. An influential political family with strong connections in the legal structure of Massachusetts has been able to trample the rights guaranteed by the Constitution for nefarious goals against someone without political influence.

In its decision, the Court of Appeals stated that the defendant conduct did not amount to the tort of intentional infliction of emotional distress, however in a recent case cited by the District Court, Britton vs. Maloney, the opposite was held to be true and found to be true by a jury in a federal court.

However in that case the defendants were not politically connected.

The Court of Appeals does mention the word "search" once yet states that officer earlys conduct is protected by qualified immunity and goes on to say that I cannot point to a clearly established right that was violated by officer early. This continues the District Courts inexcusable avoidance of the main issue stated in my pro se complaint. The District Court went out of its way to avoid the term search and the entry itself. In paragraph 67 of my complaint it states the defendant's and "defendant early acting under color of state law violated plaintiffs constitutional right to be free from unreasonable searches and seizures when he entered plaintiffs residents unannounced, under false pretenses and when asked to leave refused." The District Court in its decision was so incorrect that it made the statement that I had not even asked officer early to leave. This was just one of numerous blatant mistakes and misreadings contained in its decision. In my answer to defendant's motion to dismiss I went to great length to make it clear that I was complaining of the entry itself which is a clearly established right under the Constitution and is made very clear by the landmark decisions of the Supreme Court in Payton vs. New York, 445 U.S. 573, and most recently in Kirk vs. Louisiana, 01 -- 8419(U.S. 2002). My answer also made it very clear that the officer entered without permission and when asked to leave refused which was quoted in the complaint. No one who is a competent reader of the English language could miss this point unless that was their clear intention. The Supreme Court said " police officers need be there a Warrant or probable cause plus exigent circumstances in order to make a lawful entry into a home."

They cite the Chief Justice of the Louisiana Supreme Court wrote " the police need both probable cause to either arrest or search and exigent circumstances to justify a nonconsenual warrantless intrusion into private premises". To let this decision stand would seriously erode the protections afforded by the fourth amendment and seriously erode the Hallmark decisions stating that the intrusion into the home is the chief evil against which the wording of the fourth amendment is directed. This decision was in conflict with previous first circuit decisions including United States vs.Curzi, 867 F. 2d 36, 41(1st Cir. 1989) and Mann vs. Cannon 731 F.2d 54, 58 (1st Cir. 1984).

This case was dismissed under rules 12(b)(6) for failure to state a claim. However this is in complete opposition to supreme court decisions most recently Swierkiewicz v. Sorema N. A. No. 00-1853 and Hishon vs. King & Spalding, 467 U.S. 69, 73(1984). The cases state that a court may dismiss a complaint only if this clear that no relief could be granted under any set of facts that could be proved consistent with the allegations and that if the pleading fails to specify the allegations a manner that provide sufficient notice a defendant to move for a more definite statement under rule 12(e) before responding. This pro se complaint while not perfect together with the answer to defendants motion to dismiss put defendants on notice as to what was being complaint of.

The Court of Appeals in its decision states Baxter's claim that he was subjected to malicious prosecution for the exercise of his First Amendment right to freedom of expressions is exactly the type of bald assertion that will not survive a motion to dismiss. This line of reasoning shows that the court

understood my complaint but either does not recognize retaliation against expression of First Amendment right as a valid claim or jumped to the jury stage and made credibility determinations which are reserved for the jury in violation of the Supreme Court decision and Anderson vs. Liberty lobby, Inc., 477 U.S. at 255, 106 S.Ct. 2505. The question here is whether a court may make findings of fact when ruling on a FRCP 12(b)(6) motion. The other question presented by the decision of the appeals court is whether this apparent heightened pleading standard in conflict with the recent decisions of the sixth, 7th, and 10th circuits should survive. In Goad vs. Mitchell No. 00 -- 4245 2002 federal appeals 0250(6th Cir.) the 6th circuit stated that improper motive in a retaliation claim could be demonstrated by circumstantial evidence and they mentioned their disagreement with the the 1st circuits heightened pleading standard as stated in judge, 160 F.3d at 74. The seventh circuit in Nance vs.Vieregge, 147 F.3d 589 (7th Cir. 1998) in regards to pleading that civil rights complaints are not held to a higher standard than complaints in other civil litigation. The 10th circuit in Harbury vs.Deutch, 233 F.3d 596 (D.C. 2000), see also Currier v. Doran, 242 F.3d 905 (10th Cir. 2001) has stated " plaintiffs making constitutional claims based on improper motive need not meet any special heightened pleading standard". These courts have determined that heightened pleading requirement finds no support in the federal rules of civil procedure and constitutes the deviation from the notice pleading standards of rule 8. The question for the Supreme Court here is to decide the question of whether circuit imposed heightened pleading requirements can survive.

Another question here is whether this act," A prosecution motivated by a desire to discourage expression protected by the First Amendment" United States vs.PHE, Inc. 965F.2d 848(10th Cir.1992). See also Dombrowski vs.Pfister, 380 U.S. 479, states a claim. See also Wayte vs. United States 470 U.S. 598,(1985). The expression protected by the First Amendment was the speech that occurred in December 1990 that expressed my desire not to enter into a further romantic relationship with the respondent. This speech itself should be protected as in other cases where individuals have spoken out and then fired from employment positions when there expressed views came to the attention of those with the power to fire them and also the underlying expression over these years of my desire not to enter into a romantic relationship. There is a long history of First Amendment protection afforded this personal decision in cases such as Dallas vs.Stanglin, 490 U.S. 19(1989), Zablocki vs.Redhail, 434 U.S. 374(1978), Whalen vs.Roe, 429 U.S. 589(1977), Quilloin vs. Wallcott, 434 U.S. 246(1978), Cleveland Board of Education vs. Lafleur, 414 U.S. 632(1974), and Roberts vs. United States Jaycees, 460 U.S. 609(1984).

Regarding the issue of the FID card, the appeals court cites a case, Chiplin Enterprises, Inc. vs. City of Lebanon, 712 F.2d 1524, (1st Cir. 1983). In this cited case the court determined that no due process violation occurred, however, this case is not relevant to the facts of my situation. In that case the plaintiff was denied something that he was applying for and believed he had a right to, however he did not possess this license to begin with. In my case the FID card was my property and was in my possession for years and through which use I was able to enjoy the activity for which it was

designed. I did not apply for a renewal. How can one apply for something one already posseses? In logan vs. Zimmerman brush Co., 455 U.S. 422(1982) the Supreme Court stated " the Hallmark of property, the court has emphasized, is an individual entitlement grounded in state law, which cannot be removed except for cause. The seventh circuit has said in Reed vs. Village of Shorewood 704 F.2d 943(7th Cir. 1983)" for that reason, we interpret the term revocation to include the refusal to issue a renewal license" ....." This entitled them under city of Wyoming to all the protections, procedural and substantive, of the revocation process, thus making the interest in renewal a property right for purposes of the fourteenth amendment. Cf Memphis light, gas & water division vs. Craft, 436 U.S. 1, 98S.Ct. 1554." The first circuit in Amsden vs. Moran 904 F.2d 748 (1st Cir. 1990) stated " where persons are deprived of property interests, is long been clearly established that due process safeguards must be afforded see e.g., Paul vs. Davis, 424 U.S. 693(1976). The question here is whether property that has been held and enjoyed over a long time can be taken away through the clever use of a renewal mechanism without any protections afforded property under the procedural protections of the fourteenth amendment.

This case involves very important fundamental rights under the fourth and first amendments of privacy and expression, along with the fundamental fairness of our justice system. Does an individual's rights matter when those trampling those rights have political influence, are certain people above the law, or does the justice system work for all. There are matters of first impression here and also matters of great importance that need to be reinforced by this court.

VII. CONCLUSION

For all the foregoing reasons, Petitioner respectfully submits that the petition for writ of certiorari should be granted.
DATED: December 31, 2002

Thomas V. Baxter

Petitioner Pro Se

Thomas V. Baxter
44 Walter Street
Worcester, MA 01609
(508) 757-8092

On this day I caused to be served on the other parties, the required copy of this writ.

Thomas V. Baxter

Appendix A

United States District Court
District of Massachusetts

Civil action No. 01-40014-NMG

Thomas V. Baxter Plaintiff,
v.
Catharine E. Conte et al. Defendants

Memorandum & Order
GORTON, J.
Plaintiff Thomas Baxter brought this suit against Catherine E. Conte, Donald Conte, John J. Conte (" the conte family") Stephen early, the city over Western and the worcester police department (Worcester police, alleging inter alia that defendant's over the course of nearly 20 years, have conspired to violate Baxter's constitutional and statutory rights.

This action, brought under 42 U.S.C. section 1983 and 1985, is here under federal question jurisdiction. Baxter also asserts a claim for intentional infliction of emotional distress.

Pending before this court are five separate motions by the defendants to dismiss the complaint pursuant to the Fed R Civ P 12 (b)(6) in the plaintiffs motion to transfer the instant case to the eastern division of this district all which are opposed.

I. Legal standard

A court should not dismiss a complaint for failure to state claim under Fed R Civ P 12 B. 6 unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Roeder v. Alpha Indus. Inc. 814 F.2d 22, 25 (1st cir. 1987), quoting Conley v. Gibson, 355 US 41, 45-46 (1957).If the allegations of the complaint sufficiently state cause of action under any viable theory, a motion to dismiss to complaint must be denied. Roth v. United States, 952 F.2d 611, 613 (1st Cir. 1991) In considering such a motion, the court must take facts alleged in the complaint is true, and raw all inferences reasonably extractable from the pleaded facts in the manner most congenial to the plaintiffs theory.

In that regard, the federal courts traditionally have been mindful of the rights of pro se litigants, and have examined the pro se complaint under less stringent standards. See eg Ranieri v. United States 233 F.3d 96,97 (1st Cir. 2000); Haines v. Kerner, 404 US 519 (1972) per curiam. However, a plaintiff, even one proceeding pro se, may not rely on bald assertions, paraphrastic circumlocutions, unsubstantiated conclusions, and outright vituperation. Berner v. Delahanty 129 F.3d 20, (1st Cir 1997) Internal citations omitted. In addition, the duty to be less stringent with pro se complaints does not require the court to conjure up implied allegations. McDonald v. Hall 610 F.2d 16 (1st Cir. 1979) internal citations omitted.

II. Background

Baxter contends that the defendants, at the direction of John Conte, the district attorney of Worcester County have conspired to deny a him all of his basic constitutional rights since approximately 1986. Baxter asserts that the impetus for this elaborate conspiracy against him was his refusal to date Catherine Conte, John Contes sister, approximately two decades ago. Baxter, as he acknowledges in his pleadings, presents this court with a series of unrelated episodes as evidence of the conspiracy against him.

Reading the facts and Baxter's favor as this court must in a motion to dismiss, a series of fortunate and unfathomable events have befallen Baxter since he graduated from college. Baxter attributes his misfortune's to the Conte family and their purported co-conspirators. In support that conclusion, he recounts several instances when a member of the Conte family was inexplicably parked in a car in areas that Baxter frequented. In 1987, Baxter asserts that he overheard a conversation in which a supervisor at his place of work told another manager that Donald informed him that he says no to my daughter will never get another job in the state again and some unspecified later time, to coworkers ran around Baxter's desk and saying, below my daughter or else.

Baxter attributes a series of hostile over mysterious events to the conspiracy. By way of illustration, in 1989, Baxter states that he received three sexually explicit stalking type letters and since 1991, has received harassing phone calls. In 1993, when walking on his usual path, Baxter so I signed on a lamppost sign stating, I love you and miss you very much. Baxter suggests that Catherine Conte or one of her cohorts was the author.

Since his refusal to date Catherine Conte, Baxter also alleges that he is had trouble with the police and state authorities. In 1991, Baxter received a call from a Worcester police detective asking if he were involved in the incident near the living earth store. As some point thereafter, Baxter was charged with three criminal offenses to which were subsequently dismissed by magistrate. In 1992, Baxter security state hawkers license to sell T-shirts at sail Boston, but state authorities refused to recognize his license. In 1998, Baxter claims that Mr. Early, an officer at the Worcester police department, entered his house with a representative of his deceased fathers health-care agency. Early purportedly detained Baxter without explanation other than by some vague reference to Baxter's crimes. Finally, although certainly not the last on the list of Baxter's misfortune's, the Worcester police department declined to renew Baxter's firearm identification card in 1999 in the city Worcester refused to issue him a business license in 2000.

III. Discussion

A. Legal standard for section 1983

Under 42 U.S.C. 1983, Baxter my show that a person, acting on the color of state law committed a violation of a constitutional or federal statutory right.
West v. Atkins, 487 US 42 (1988) Section 1983, provides relevant part,

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any state or territory with a

District of Columbia, subjects, or causes to be subjected, any citizen of United States or other person within the jurisdiction thereof, to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the person injured in an action at l law, suit in equity, or other proper proceeding for redress.

42 U.S.C. 1983

As the first Circuit Court of Appeals has recognized, 42 U.S.C. 1983 can be an instrument of justice in the hands-on week against the mighty but it's misuse has had an impact on the court system. Although there is not heightened pleading requirement for eight 1983 claim, the plaintiff must nevertheless rely more than subjective characterization's work conclusory descriptions of a general scenario which could be dominated by on pleaded fact.Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49 (1st Cir 1990)
quoting dewey vs. University of New Hampshire (1st circuit 1982.)

In asserting his 1983 claim, Baxter alleges inter alia, that 1 defendants Donald conte, Catherine Conte, and John conte collectively the Contes conspired to use the power of John contes office to prosecute Baxter maliciously, 2 the contes and officer early, acting on the color of state law, violated Baxter's constitutional right to be freed from unreasonable searches and seizures, and 3 the contes and the city Worcester deprived Baxter of his right to the equal protection of the laws by virtue of Worcester's refusal to issue Baxter a firearm's identification card.

1. The Conte family
Baxter alleges that the contes acting under color of state law, conspired 12 prosecute him maliciously,2 to seize him unconstitutionally of the and to prevent him from obtaining the firearms license or a business license. Although a pro se complaint is construed liberally, Baxter's allegations are no more than bald assertions that cannot survive a motion to dismiss. Besides his allegations that Baxter refused to date Catherine conte, he makes no rational connection between the defendant's and the alleged deprivation of his constitutional rights.Correa-Martinez , 903 F.2d at 52.

Moreover, Baxter fails to allege how the contes were acting under the color of state law. His assertion that John conte, the district attorney, abuse to power of his office to master mind the purported conspiracy has neither a factual nor an infferential basis in the complaint under any theory. See Cruz-Erazo v. Rivera-Montanez, 212 F.3d 617 (1st Cir. 2000). Noting that when a litigant does not allege the legal argument the court is not obliged to dream up and articulate litigants arguments for them.

2. The city Worcester and the Worcester police department

It is well established that a municipality cannot be held liable under section 1983 on a theory of respondeat superior; rather, the plaintiff must pleaded and proven injury caused by an action taken pursuant to official municipal policy or custom. Monell v. New York City department of social services 1978. A causal nexus must also exist between the policy or custom and the alleged deprivation of constitutional or federal

rights. Bryan County commissioners vs. Brown 520 US 397 1997.

In the instant case, the plaintiff fails to allege they city of Worcester or police department policy or custom violated his constitutional rights. Although the plaintiff, at this stage in the litigation, the only make a sure complaint statement of relief that statement must at least identify a relevant policy or act by a proper municipal decision maker. Id at 404-05; Britton v. Maloney, 901 F.Supp. 444,(D. Mass 1995). The plaintiff here merely contends that the city in the police failed 1 to issue him a firearm identification card in 1999, or 2 to mail a license to him in 2000. A plaintiff, without more, cannot recite to random, isolated events to support an inference of an unconstitutional policy particularly if he makes no allegations other than that they was a conspiracy, writ large, against him.

3. Officer Early
under the fourth amendment to the United States Constitution, people have a right to be secure against unreasonable.... Seizures." U.S. constitutional amendment IV. A seizure occurs when, the light of all of the surrounding circumstances, a reasonable person would not have felt free to leave. United States vs. mendenHall 446 U.S. 544, 554 1980.

Baxter contends that earlys entry into his home with a representative of his fathers health-care agency on January 17th, 1998 constituted an unreasonable seizure. Baxter neither alleges that early entered by force nor that he did anything but question Baxter about several reported crimes. In fact, Baxter does not contend that early refused to leave his

premises. The plaintiff has not alleged even a general allegation that early, through physical verbal acts, restrained Baxter in a manner that would have made a reasonable person feel unable to leave. Accordingly, tax has failed to allege that constitutionally suspect seizure occurred.

B. legal standard for section 1985(3)
and actionable claim under 42 U.S.C. 1985 must allege that 1 some racial, or perhaps otherwise class based, invidiously discriminatory and thus lay behind the conspirators action, Griffin vs. breckenRidge, 403 U.S. 88,102 1971, and 2 conspiracy was directed toward interfering with rights that are protected against private, as well as official, encroachment. United brotherhood of carpenters and Joiners of America vs. Scott, 463 U.S. 823,833 1983. The essential allegation as section 1985 claim is class based animus. The conspiracy must also be purposefully aimed at depriving that class of its constitutional rights. bray v. Alexandria women's health clinic, 506 U.S. 263 1993.

Baxter alleges that the contes have conspired for approximately 20 years with the Worcester police department and city Worcester to deprive him of the equal protection of laws. In support of that claim, Baxter contends that the defendants activities evidence a pattern of premeditated illegal acts amounting to a vendetta fueled by the power of the state...

Baxter's factual allegations are not the stuff out of which a 1985 invidiously discriminatory animus are created. In his pleadings, Baxter does not even suggest class based animus but rather bases was claims on a legal theory that the

defendants are particularly targeting him because of his actions as individual. Even after construing the complaint liberally, Baxter's conclusory statements that the defendants have a vendetta against him failed to allege the essential elements of a 1985 claim. Romero-Barclero vs. Hernandez-agosto, 75 F. 3-D 23, 34-35 (first circuit 1996).

C. state law claim: intentional infliction of emotional distress

If this court were to dismiss Baxter's two federal claims, it could consist in the dismiss Baxter state law claim of intentional infliction of emotional distress, but the latter should be dismissed even if Baxter's federal claims survive defendants motions dismiss because he is not alleged such a state law claim.

To set for sufficiently at claim for intentional infliction of emotional distress, the plaintiff must allege that 1 the defendants intended to inflict the emotional distress or should known that emotional distress was the probable effect of their conduct, 2 the defendants conduct was extreme and outrageous, the defendants actions caused the plaintiffs distress, and the plaintiffs emotional distress was so severe that no reasonable person could be expected to endure it. Tetrault vs. Mahoney, Hawkes, & Goldings, 425 mass 456, 466 mass. 1997 internal citations omitted.

Baxter has alleged neither substantive claims nor any set of facts that could support in action for intentional infliction of emotional distress. As an initial manner, Baxter does not distinguish among the defendants in his complaint, making it unclear whether the discrete acts of the defendants or the

conspiracy more generally is the source of his purported distress. Notably, the city Worcester endorsed the police department, as a matter of law, are not liable for the intentional torts of their employees. Other than the plaintiffs Bare averment that the city Worcester and certain Worcester police officers participated in a grand conspiracy, is unclear what acts of the city or the police would be considered outrageous. Baxter's emotional distress claim is equally untenable with respect to the other named defendants. His mere suggestion of conspiracy, without more, does not sufficiently allege a claim for the intentional infliction of emotional distress.

D. legal standard for a motion to transfer venue
Baxter seeks to transfer the instant suit to the eastern division of the district of Massachusetts pursuant to 28 U.S.C. 1404 a and local rule 40.1 F. on the ground that he will be unable to secure a fair and impartial jury in the central division. A party may transfer a case to another division under 1 local rule 40.1 F. for good cause shown and 2 under 28 U.S.C. 1404 a when it is in the interest of justice or more convenient forum for the parties and witnesses. see e.g., Gulf oil corporate vs. Gilbert, 330 U.S. 501, 508-9 1947.

Baxter does not dispute that the center division is the appropriate venue for the present case the rather relies upon his personal experience and several newspaper articles about John Contes local influence to support is motion to transfer. Baxter for the alleges that John conte has a reputation for using the power of his public office to settle personal scores. Baxter Stanley supported statements about the district attorney do not, however, set forth a persuasive was sufficient

rationale justifying transfer of the instant case when, inter alia, the parties, witnesses and evidence are all located within this division. In this court's jury impanelment procedure can guarantee plaintiffs such as Baxter A. fair and impartial trial.

IV. Conclusion
even at the liberally construing Baxter's complaint and responses to the pending motions, this court can discern no cognizable legal claim. The defendants motions to dismiss will be allowed. Although Baxter's motion to transfer venue is rendered moot by virtue of this quartz intended ruling on the motions to dismiss, Baxter has not, any event, demonstrated that the transfer of this action to the eastern division is warranted.

Order
for the reasons stated in the memorandom above, defendant's respective motions to dismiss (docket numbers a 4,7,10, 15, and 17) are allowed and plaintiffs motion to transfer venue(docket No. 28) is denied as moot.

So ordered.

Nathaniel M. Gorton
dated: December 28, 2001

US Court of Appeals for the First Circuit
Case Summary
Court of Appeals Docket #: 02-1133 Filed: 2/8/02
Nsuit: 3440 Civil Rights: Other

Baxter v. Conte, et al
Appeal from: U.S. District Court of MA

Lower court information:
District: 0101-1 : 01-40014
lead: 01-40014
trial judge: Nathaniel M. Gorton

5/24/02 CASE SUBMITTED 05/24/02. Boudin, Ch. J., Selya, Lipez, JJ. [02-1133] (ceca)

7/23/02 JUDGMENT filed Boudin, Chief Judge, Selya, Lipez, Circuit Judge closing case. Thomas V. Baxter appeals from the district court's dismissal of his 42 U.S.C. § 1983 civil rights complaint for failure to state a claim on which relief could be granted, Fed. R. Civ. P. 12(b)(6). We have reviewed Baxter's complaint, the briefs of the parties, and the applicable law, and we discern no reversible error in the district court's judgment of dismissal. Baxter's claim that he was subjected to malicious prosecution for the exercise of his First Amendment right to freedom of expression is exactly the type of "bald assertion" that will not survive a motion to dismiss. See Correa-Martinez v. Arrillaga-Belendez, 903 F.2d 49, 52 (1st Cir. 1990).Baxter's claim that his due process rights were violated when his application for renewal of a firearms identification card was not approved also fails to state a constitutional deprivation. See Chiplin Enterprises, Inc.v. City of Lebanon, 712 F.2d 1524, 1528 (1st Cir. 1983). Nor is his assertion that the defendants' conduct amounted to intentional infliction of emotional distress availing. See Agis v. Howard Johnson Co., 371 Mass. 140, 355 N.E.2d 315, 318-

19 (1976). Moreover, the district court did not abuse its discretion by failing to address Baxter's one-sentence request, contingent on the district court's granting the defendants' motions to dismiss, to amend his complaint. See Grant v. News Group Boston, Inc., 55 F.3d 1, 5 (1st Cir. 1995). Baxter's claim that he was subjected to an unconstitutional search and seizure by Officer Early fails on qualified immunity grounds. Because it remains an open question whether, as here, an officer's mere continued presence in the residence after being asked to leave, without more, states a Fourth Amendment claim, see Koch v.Town of Brattleboro, 287 F.3d 162, 167 (2d Cir. 2002), Baxter cannot point to a "clearly established right" that was violated by Officer Early. Therefore, Officer Early may not be held liable for this conduct as he is qualifiedly immune. See Mendoza v. Block, 27 F.3d 1357,1361 (9th Cir. 1994). The district court's judgment is AFFIRMED. [672583-1] [02-1133] (eiln)

US Court of Appeals for the First Circuit
Case Summary

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Nsuit: 3440 Civil Rights: Other
Baxter v. Conte, et al
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Before Boudin, Chief Judge, Torruella, Selya, Lynch, Lipez, and Howard, Circuit Judges
Order of Court
Entered October 3, 2002

The panel of judges that rendered the decision in this case having voted to deny the petition for rehearing and the suggestion for the holding of a rehearing en banc having been carefully considered by the judges of this court in regular active service and a majority of said judges not having voted to order that the appeal be heard or reheard by the court en banc, it is ordered that the petition for rehearing en banc be denied.